

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED

NOV 21 2006

[Signature]
CLERK

EMPLOYERS MUTUAL CASUALTY
COMPANY,

Plaintiff,

v.

SIOUX EQUIPMENT CORPORATION,
a South Dakota corporation;
STATE OF SOUTH DAKOTA
PETROLEUM LEASE COMPENSATION
FUND; AMERON INTERNATIONAL
CORPORATION, and WILLISTON,
INC.,

Defendants.

COMPLAINT FOR
DECLARATORY RELIEF

06-4239

Plaintiff, by counsel of record, states its claim for
declaratory relief against Defendants as follows:

1.

Plaintiff is an insurance company licensed to do business in
the State of South Dakota, with its principal offices located in
the State of Iowa.

2.

Defendant Sioux Equipment Corporation is a corporation,
organized and existing under the laws of the state of South
Dakota, with its principal place of business located in Sioux
Falls, Minnehaha County, South Dakota.

3.

Defendant State of South Dakota Petroleum Release

Compensation Fund (hereinafter PRCF) is a statutorily created entity with the authority to take action as authorized under state statute, including SDCL Chapter 34A-13.

4.

Defendant Ameron International Corporation is a corporation organized and existing under the laws of the State of South Dakota, with its principal place of business located in Pierre, Hughes County, South Dakota.

5.

Defendant Williston, Inc. is a corporation organized and existing under the laws of the State of South Dakota, with its principal place of business located in Watertown, Codington County, South Dakota.

6.

This Court has jurisdiction under 28 U.S.C. § 1332 et seq, as there is a complete diversity of citizenship among the parties, and the amount in controversy exceeds \$75,000.00.

7.

The PRCF has initiated a civil action against Defendant Sioux Equipment Corporation in Circuit Court, Third Judicial Circuit, Codington County, South Dakota, alleging damages, all as is contained in a Verified Complaint dated June 27, 2006, filed as civil action 06-0487. A copy of said Verified Complaint is

attached as Exhibit 1, and will be referred to herein as the Complaint in the Litigation.

8.

Defendant Ameron International Corporation has been impleaded as a Third Party Defendant in the Litigation, a copy of the Third Party Complaint being attached as Exhibit 2.

9.

Defendant Williston, Inc. has intervened as Intervenor Plaintiff in the referenced Litigation, a copy of the Intervenor's Complaint being attached as Exhibit 3 to this Complaint.

10.

For the effective dates September 30, 1997 through September 30, 2001, Plaintiff issued its policies of general liability coverage to Defendant Sioux Equipment Corporation, coverage being provided pursuant to the terms of the policy. A copy of said policies will be filed later with this Court.

11.

In the Litigation, PRCF alleges various claims and theories against Sioux Equipment, and alleges claims for monetary damage against Sioux Equipment.

12.

Based on all facts and circumstances, and under South Dakota law, the policy issued by Plaintiff to Defendant Sioux Equipment

does not afford coverage for the matters alleged in the Complaint in the Litigation, and based thereon, Plaintiff has no duty to defend Defendant Sioux Equipment in the Litigation, or to indemnify Defendant Sioux Equipment for or from any amount that may be adjudged against Defendant Sioux Equipment in the Litigation, for reasons including, but not limited to, the following:

A. The alleged incidents set forth in the Complaint in the Litigation did not occur within the policy period for the policy issued by Plaintiff.

B. The Complaint in the Litigation does not allege matters or damages that constitute "property damage," or other damage that would be covered under the policy.

C. The Complaint in the Litigation does not allege facts or circumstances constituting an "occurrence" under the policy.

D. Policies issued by Plaintiff to Defendant Sioux Equipment, Inc. exclude from coverage matters relating to "property damage" to "your product," or "your work."

E. The matters alleged in the Complaint in the Litigation involve matters that come within the "Pollution Exclusion" contained in the policies.

F. Plaintiff reserves the right to amend this Complaint should additional policy exclusions and issues be disclosed in discovery in this action.

13.

Defendants PRCF, Ameron International Corporation, and Williston, Inc. may claim an interest in the subject matter of this Declaratory Judgment Action, and for that reason, are named as Defendants in this action.

14.

A justiciable controversy exists among the parties who are entitled to relief under SDCL Chapter 21-24, and other applicable state and federal law; and this Court should determine the controversy existing.

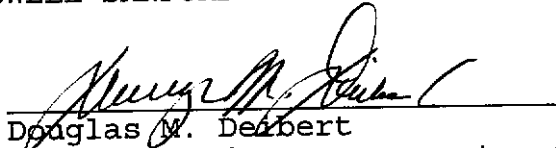
WHEREFORE, Plaintiff prays that the Court enter Judgment declaring Plaintiff has no duty to defend Defendant Sioux Equipment, Inc. in the Complaint in the Litigation; and Plaintiff has no duty to indemnify Defendant Sioux Equipment, Inc. for or from any amounts that may be adjudged in favor of PRCF, or any other party, in the Complaint in the Litigation, against Defendant Sioux Equipment, Inc.

Plaintiff further prays that it be awarded its costs and disbursements in this action, along with such other and further relief the Court deems just and equitable.

Dated at Sioux Falls, South Dakota, this 20 day of
November, 2006.

CADWELL SANFORD DEIBERT & GARRY LLP

By


Douglas M. Deibert
200 East 10th Street - Suite 200
P.O. Box 1157
Sioux Falls, SD 57101
(605) 336-0828